claims are not obvious. Furthermore, Walpole et al. and Wood et al. provide no motivation or incentive to one of ordinary skill in the art to modify the compounds as suggested in the Action to attain the claimed compounds, flavoring composition, cosmetics or dermatological compositions. Walpole et al. is directed to analgesic agents and Wood et al. is directed to capsaicin binding proteins. Neither is concerned with flavoring compositions, and thus, provide no expectation of producing flavoring compounds as suggested in the Action. Thus, the claims are not obvious over Walpole et al. or Wood et al.

The Action again refers to compound 8e on page 2375 of Walpole et al. and the identical compound F in Table 1 on page 383 of Wood et al. As noted in the Action, these compounds are not covered by the pending claims. Furthermore, these are the only hydroxyl amide structures disclosed in Wood et al. or Walpole et al.

Walpole et al. discloses 29 different compounds of which compound 8e is the only hydroxyl amide structure compound disclosed. Walpole et al. is directed to analogs of capsaicin with agonist activity as analgesic agents. Furthermore, Walpole et al. is specifically directed to the analogs of capsaicin that differ by the amide bond referred to as the "B region" and not the alkyl chain or the substituents on the phenyl ring. Walpole et al. is specifically directed to the variations in the connecting amide bond in relation to the agonist activity. Walpole et al. is not concerned with the variations or position of the substituents on the phenyl ring or the variations on the alkyl group of capsaicin. Accordingly, Walpole et al. provides no motivation or incentive to produce homologues of compound 8e as suggested in the Action.

Walpole et al. discloses the use of capsaicin analogs as analgesic compounds in the pharmaceutical area and not flavorings, cosmetics or dermatological compositions. The *in vitro* tests disclosed on page 2373 of Walpole et al. for analgesic activity provide no suggestion that compound 8e can be used as a flavor substance. Walpole et al. further fails to

provide any suggestion that the compound 8e can be used in food compositions as a flavoring substance. Walpole et al. provides no motivation or incentive to produce the analogs as suggested in the Action. One skilled in the art would not consider Walpole et al. as being relevant to flavorings and food compositions since Walpole et al. is directed to pharmaceutical compounds and specifically analgesics having agonist activity. Walpole et al. does not suggest the flavoring composition of claims 1-5, the nutritional or oral hygiene composition of claims 6-11, the flavoring compounds of claims 12 and 13, the cosmetic or dermatological compositions of claim 16, or the method of imparting a flavor as in claims 17-19. Accordingly, the claims are not obvious over Walpole et al.

Wood et al. is directed to a capsaicin analog having a photoactivatable azide group for enabling detection of capsaicin binding proteins. Wood et al. is similar to Walpole et al. in that the compounds produced are primarily concerned with the modifications to the amide bond of capsaicin. Wood et al. discloses 19 different compounds, only one of which is the hydroxyl amide of the present invention. Wood et al. fails to disclose or suggest other analogs or derivatives of compound F, and thus, provides no motivation or incentive to modify the compounds of Wood et al. to attain the claimed compounds as suggested in the Action.

Wood et al. on page 384 in Section 4, discloses the capsaicin has toxic effects. The experiments are conducted on cultures of neonathal red DRG neurons, membrane extracts of rat liver, cerebellum and DRG, as well as chick and bovine DRG. Wood et al. provides no suggestion that the compound F can be used as an aroma or flavoring substance or used in food compositions. One skilled in the art would not be motivated to modify the compounds of Wood et al. to attain the compounds of the claimed invention since the claimed compounds are not concerned with the photoaffinity labeled capsaicin binding proteins of Wood et al.

As disclosed on page 382, Section 3 of Wood et al., the capsaicin compounds were tested in a competition radioimmunoassay. As specifically disclosed therein, the structural requirements for recognition by the antiserum were precise. The presence of the 3-methoxy group of compound O and a 4-hydroxyl function (compound N) is clearly stated as being obligatory. Furthermore, reversing the amide bond of compound 3 led to a small loss in immunoreactivity. Substituting the bond with a sulfonamide of compound D, a hydroxyamide of compound F, a thiourea of compound G, and others led to a progressive loss in immunoreactivity, which shows less correlation with agonist activity as measured by calcium accumulation. Thus, Wood et al. discloses the unpredictable properties of the compounds based on the modification of the amide bond. Furthermore, Walpole et al. clearly indicates that the position of the methoxy and hydroxy groups on the phenyl ring are critical for the intended purpose. Therefore, Wood et al. effectively teaches away from the compounds of the claimed invention. Wood et al. further discloses the importance of the alkyl side chain, and thus, provides no motivation or incentive to select homologues of the side chain as suggested in the Action.

Wood et al. does not disclose or suggest the flavoring composition of claims 1-5, the nutritional or oral hygiene composition of claims 6-11, the flavoring compounds of claims 12 and 13, the cosmetic or dermatological composition of claim 16 or the method of imparting a flavor as in claims 17-19.

In view of the above, Walpole et al. and Wood et al. do not suggest the claimed compounds or compositions. Furthermore, one skilled in the art would not be motivated to modify the compounds of Walpole et al. or Wood et al. in view of the disclosures of the significance of the substituents. One skilled in the art would not be motivated to produce the flavor compounds, compositions, the cosmetic or dermatological compositions or a method of imparting flavor to a composition using the claimed compounds in view of the toxic

effects of capsaicin disclosed in Wood et al. or the analgesic agents of Walpole et al. Accordingly, the claims are not obvious over Wood et al. or Walpole et al.

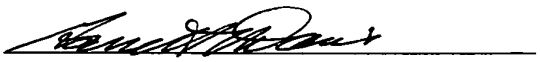
Rejection of Claim 14

Claim 14 is rejected under 35 U.S.C. § 103(a) as being obvious over WO 01/98258 in view of Walpole et al. or Wood et al. Claim 14 is directed to a method of producing the flavoring compounds of claim 12. WO '258 is cited for disclosing a similar process of producing similar compounds. The rejection is based on the position that it would have been obvious to modify the process of WO '258 to attain the compounds of Walpole et al. or Wood et al. For the reasons discussed above, the compounds of claim 14 are not obvious over Walpole et al. or Wood et al. Therefore, it would not have been obvious to one of ordinary skill in the art to modify the process of WO '258 to produce the novel compounds of the present invention.

WO '258 is specifically directed to producing dihydroxy compounds. The claimed invention is not directed to dihydroxy compounds as in WO '258. WO '258 provides no suggestion of the claimed compounds or a process for producing the compounds. Accordingly, claim 5 is not obvious over WO '258 either alone or in combination with Wood et al. or Walpole et al.

In view of the above comments, the claims are submitted to be allowable over the art of record. Accordingly, reconsideration and allowance are requested.

Respectfully submitted,



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